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Fred Risser
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Dear Senator Risser:

Thank you for your recent letter requesting my "constitutional analysis of Wisconsin's obligations to implement without full federal funding the 2002 revisions to the Elementary and Secondary Education Act ("the ESEA")." As you noted in your request, "[t]he general goals of the federal legislation are laudable. Indeed, no one in this state can quarrel with those goals because no state values education more than Wisconsin." Yet this legislation raises profound practical, fiscal and legal issues that warrant the attention of both the legislative and executive branches of state government.

This federal law mandates qualitative educational standards, directing their implementation by state and local governments. That, in itself, raises constitutional questions. Beyond the legal issues, however, lies a stark reality: the ESEA leaves at least some of those mandates unfunded or, more precisely, leaves the bill for them to state taxpayers. In addition, as you noted, the sanction for failing to comply with the ESEA's provisions is severe: withdrawal of all federal funding even if the failure is due to the federal government's refusal to fully fund the law and its requirements. This letter, because of the significance of the issues for public education, addresses a number of the ESEA provisions involving the state-federal relationship.

The ESEA is unusual compared with other congressional enactments that contemplate States and their subdivisions undertaking programs and policies in exchange for federal funding. Section 7907 of the ESEA contains a provision that expressly restricts what federal agencies and officials may require of States and their subdivisions:

> **§ 7907 Prohibitions on Federal government and use of Federal Funds**
> **(a) General Prohibition.** Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

20 U.S.C. § 7907(a).[1] The language seems clear and compelling: the federal government cannot compel the States to develop or pay for specific educational programs.

Interpretations of Similar Statutory Language

No court, to my knowledge, has construed the meaning of this provision in the context of the ESEA. This type of language has appeared in only two other federal statutes, both involving education and enacted in 1994. One was repealed in 1999 (20 U.S.C. § 5898) while the other remains in effect (20 U.S.C. § 6234). The only court to have considered this language in any context did so only in passing, and indirectly, as to the now repealed statute, 20 U.S.C. § 5898, by noting a statutory interpretation in a letter from the Secretary of the United States Department of Education:

> On July 31, 1996, Byrne wrote United States Secretary of Education Richard Riley, asking, among other things, if the Federal Government could mandate, direct, or control Alabama's curriculum if Alabama applied for and received the Goals 2000 funds. In a letter dated August 2, 1996, the Secretary responded by stating that § 318 of the Goals 2000 Act[2] expressly prohibits the Federal Government from mandating, directing, or controlling any state's curriculum or program of instruction or allocation of state or local resources.

State Bd. of Educ. v. McClain, 810 So. 2d 763, 766 (Ala. Civ. App. 2000), *reh. denied*, *rev'd on other grds.*, *Ex parte Alabama State Bd. of Educ.*, 810 So. 2d 773 (Ala. 2001). Though the same language addressed in *McClain* appears in 20 U.S.C. § 7907(a), your inquiry, as you noted, focuses on the specific and pointed language in 20 U.S.C. § 7907(a) regarding costs:

> Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to … mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

While no court has considered the type of question you posed, the Nebraska Attorney General was asked a similar question regarding 20 U.S.C. § 5898 (now repealed) and 20 U.S.C. § 6234:

> **Does the State have to use its own funds to comply with GOALS 2000? With the School-To-Work Opportunities Act?**

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[1] There is similar language in 20 U.S.C. §6575: "Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction."

[2] Now codified at 20 U.S.C. § 5898.

> "Nothing in [the Goals 2000 statutes] shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or a school's curriculum, program of instruction, or allocation of State or local resources or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this [Act]." 20 U.S.C. § 5898. An identical provision is included in the STW Act. See 20 U.S.C. § 6234. Under the STW Act, however, a state may apply for either a one-time "development" grant, not to exceed $1,000,000, or a one-time "implementation" grant, … the payment of which shall not exceed 5 federal fiscal years. See 20 U.S.C. § 6121 - § 6127 (STW Act development grants); 20 U.S.C. § 6141-§ 6148 (STW Act implementation grants). Unless further authorized by Congress, the STW Act will terminate, or sunset, on October 1, 2001. 20 U.S.C. § 6251. Thus, if a participating state desired to continue a school-to-work program beyond that date, then no federal funds are currently guaranteed for such purpose.

Neb. Op. Att'y Gen. No. 98047, 1998 WL 796717, at *3. Although the point is not stated explicitly, the Nebraska Attorney General appeared to view the language in these federal statutes as calling for States and their subdivisions to be free of any federally-imposed obligations not actually paid for with federal funds. *Id.* Regardless, the guidance provided by *McClain* and this Nebraska AG opinion is thin at best.

General Statutory Construction Principles

Absent any definitive authority construing the statutory language, it is appropriate to turn to general statutory construction principles. Just a few weeks ago, the Supreme Court confirmed again that, when attempting to ascertain the meaning of a federal statutory provision, "inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States*, 124 S. Ct. 1587, 1593 (2004). If the relevant inquiry can be answered by the plain meaning of the statutory language, then, except in rare circumstances where that plain meaning calls for absurd results, the plain meaning controls and legislative history should not be consulted at all. *E.g., Lamie v. United States Trustee*, 124 S. Ct. 1023, 1030 (2004) ("when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms" (citation omitted)); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) ("When the words of a statute are unambiguous, ... 'judicial inquiry is complete'" (citation omitted)). In determining whether the language relevant to the inquiry is unambiguous or not, it does not matter if the language is "awkward" or "ungrammatical" so long as the meaning is plain. *Lamie*, 124 S.Ct. at 1030.

The language in 20 U.S.C. § 7907(a), on which your inquiry turns, seems to bear only one reasonable interpretation: federal agencies and officials lack authority to require any State, or State subdivision, to take any action under the ESEA that is not fully funded by federal monies. Could the language instead mean that a State, or a State subdivision, which has accepted federal funding in exchange for a promise to comply with requirements imposed by the ESEA, nevertheless can be required by the U.S. Department of Education or its officials to engage in activities that are not fully funded by federal monies? The express language chosen by Congress is contrary to such an interpretation: "Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate … a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act." 20 U.S.C. § 7907(a). That language can only reasonably be read as tying the program standards and obligations of a federal funding recipient under the ESEA directly to whether federal monies are available to discharge those obligations.

That plain meaning prevails, and no legislative history need be consulted, unless the plain meaning requires absurd results. *Lamie,* 124 S. Ct. at 1030.[3] No absurd results are apparent in the interpretation noted above. The states are entitled to take Congress at its word that it did not intend to require state and local governments to expend their own funds to comply with the detailed and proscriptive federal mandates in the ESEA. In my view, the plain language of 20 U.S.C. § 7907(a) means that the United States Department of Education and its officials cannot require any State, or subdivision of a State, to engage in actions under the ESEA, with its threat of losing federal funding, if taking those actions would require the State or subdivision to draw

[3] While legislative history, if it could be consulted, could open a lively debate, I note just one piece of legislative history that underscores the plain meaning of 20 U.S.C. § 7907(a). The ESEA passed the Senate, as a conference committee bill, on December 18, 2001. 147 Cong. Rec. S13365-07, * S13421-S13422, 2001 WL 1613966 (Dec. 18, 2001). During debates over that bill the prior day, and immediately after a chief co-sponsor Senator Edward Kennedy had spoken, Senator Larry Craig stated his intent to vote for the bill, which he did (*id.*), because, unlike prior "Federal mandates" imposed by Congress, the ESEA was "fully funded" and States and their subdivisions could not be required to expend any of their own resources. 147 Cong. Rec. S13322-03, * S13337-S13338, 2001 WL 1602196 (Dec. 17, 2001). Senator Craig observed that:

> This demand for demonstrable results is indeed-and some have charged-a Federal mandate. I have been in this Chamber more than once before speaking against Federal mandates. But this one Federal mandate replaces numerous other mandates which are eliminated throughout the bill. This mandate is also unlike most of the other Federal mandates that are incorporated in current law today; it is fully funded. In fact, the bill requires full funding for the cost of the tests which will be developed due to its mandates. And if we do not fund those costs, the States do not have to implement the tests. That is a fairly reasonable and appropriate formula. If we do not own up to our promise and our commitment under the law, then the States do not have to follow suit.

Id. Since legislative history should not be consulted, however, I refrain from undertaking that level of analysis.

upon its own monetary resources. Whether this is actually occurring in Wisconsin is a question that the Wisconsin Department of Public Instruction (DPI) or Wisconsin school districts would have to answer. DPI, most particularly, would be in a position to develop the detailed information that would demonstrate the extent to which federal officials are requiring Wisconsin, or Wisconsin school districts, to take actions under the ESEA for which full federal funds are unavailable. Although not specific to Wisconsin, however, several general fiscal analyses strongly suggest that the ESEA's mandates are not fully funded.

The Unfunded Costs of the ESEA

Over the next decade, under the ESEA, public schools[4] must make annual yearly progress (AYP) in raising student test performance to levels of proficiency on standardized reading and mathematics tests. Virtually all students in the state (95% of whom must be tested), including disabled students and those with limited English skills as well as those who simply might be unmotivated or poor test takers, must perform at least "proficient[ly]" on the standardized tests. The failure of any one of the groups listed[5] to reach that year's benchmark for standardized test performance (or the failure of the school to administer the tests to 95% of students in each of those groups) results in the school being graded as failing. A school that fails to make AYP two or more years in a row is subject to sanctions, 20 U.S.C. § 6316(b), including, ultimately, complete restructuring of the school. The issue is not about the importance of educational progress, proficiency and testing; the critical question, is whether the ESEA pays for them.

The unfunded costs of the ESEA fall into three major areas: the costs of developing, administering and reporting on the significantly greater testing required by the federal government; the costs of implementing the required sanctions against schools that fail to make AYP; and the cost of providing sufficient funding to permit virtually every student in every school to reach "proficiency" levels on standardized tests.[6] The latter two cost areas may overlap to some degree.

The unfunded costs associated with testing are the easiest to calculate and should be easily accessible by DPI. The General Accounting Office has estimated that the nationwide cost of simply developing and administering (at the state level) the required additional tests will be

[4] Private schools, even those receiving students from "sanctioned schools," are largely exempt from regulation.

[5] The four general subgroups are low-income, racial and ethnic minority, disabled, and limited English proficiency students. In Wisconsin, ethnicity is defined in sub groups of American Indian/Alaskan Native: Asian/Pacific Islander; Black, not of Hispanic Origin; Hispanic; and White, not of Hispanic Origin.

[6] Notably, the costs of reaching proficiency arguably encompass the costs of complying with the ESEA mandates requiring schools and school district to ensure that teachers and certain paraprofessionals obtain certain specified credentials. *See* 20 U.S.C. § 6319. Although it is difficult to estimate the costs associated with this mandate, they could be significant, especially in rural or lower paying school districts.

between $1.9 - $5.3 billion between fiscal years 2002-2008. *Title I: Characteristics of Tests Will Influence Expenses; Information Sharing May Help States Realize Efficiencies*, GAO-03-389 (May 8, 2003), available at www.gao.gov/new.items/d03389.pdf. The GAO study, however, did not provide any estimate of the costs of test administration at the district level or the significant lost opportunity cost of the ESEA testing mandates, which require schools and districts to devote school days to test preparation and administration rather than to instruction.

The cost of implementing the ESEA's sanctions against schools that fail to meet AYP over a specified period is more difficult to calculate because it involves projecting the number of schools that will fail to meet their AYP requirements and the scope of the resulting sanctions. The potential costs of the mandated sanctions could be substantial. One requirement in particular could be especially costly. Schools that fail to meet AYP two years in a row must offer students the choice of attending at least two other district schools that have met AYP. They must offer that choice, moreover, regardless of the capacity of the receiving school. *See* 20 C.F.R. § 200.44. This means that "non-failing" schools may be required to substantially expand, regardless of the cost. Obviously, the mandated expansion costs that follow for states and localities, for which the ESEA contains no funding, could collide with Wisconsin's strict revenue limits and trigger significant constitutional questions about whether federal courts can order districts to increase their mill rates and their property tax bills, regardless of voter action or a school district's autonomy.

But perhaps the largest cost to the state and its taxpayers is the cost of meeting the proficiency mandate. The Institute for Wisconsin's Future has developed a model to determine the cost to provide Wisconsin students with an education that meets certain recognized standards (e.g., smaller class sizes and remedial assistance for certain students). *See* Jack Norman, *Funding Our Future: An Adequacy Model for Wisconsin School Finance* at ix, 19-26, 55 (June 2002), available at www.wisconsinsfuture.org/reports/Adequacy_report6_02.pdf, and testimony before the Governor's Educational Task Force. The Institute concluded that to provide such an education, which would not necessarily ensure that students tested at the levels required by the ESEA, would require, on average, an additional $2,880 per pupil or an aggregate $2.5 billion in total expenditures.

Currently, Wisconsin receives approximately $152 million in additional federal aid to comply with Title I of the ESEA (which imposes all of the mandates described above). Wisconsin already has 68 schools and 12 school districts that have failed to meet AYP two years in a row and an additional 58 schools and 21 districts that failed to meet AYP last year. Schools probably already are implementing changes to meet AYP. Thus, it is likely that the State of Wisconsin and many school districts already are spending more funds than the federal government provides, and this amount could grow dramatically over the next few years.

That conclusion is consistent with the more detailed cost analyses done for other states. Minnesota and Wisconsin schools are frequently compared. A Minnesota audit has concluded that, even assuming that in each year over the next ten years Minnesota students consistently will post high gains in standardized test performance, by 2013-14 fully 82 percent of its schools will be deemed "failing" under the ESEA. Legislative Auditor, *Evaluation Report—No Child Left Behind* at 40-44 (March 2004), available at www.auditor.leg.state.mn.us/Ped/pedrep/0404all.pdf. A study for the State of Ohio estimated that, by 2009-10, the annual cost to comply with the proficiency mandate alone would be $1.4 billion, with an immediate outlay of $450 million required. *See* W. Driscoll & H. Fleeter, *Projected Costs of Implementing NCLB* at 51 (Jan. 21, 2004), available at www.ode.state.oh.us/legislator/COST_OF_NCLB/COSTOFIMPLEMENTINGNCLB-012104.pdf. The Journal of State Governments (Spring 2004) reports, based on 18 different state studies that, on average, complying with the proficiency mandate will require unfunded increases in educational spending of 27.7 percent.

DPI and other state agencies will need to conduct a detailed analysis to determine the precise amount of state funds that currently are being used to defray the ESEA mandates. The only real question, however, appears to be just how much additional state funding already has been required and how quickly that amount will increase.[7]

Constitutional Analysis

If a federal agency is requiring Wisconsin or its subdivisions to expend their own resources to comply with the ESEA, that would violate 20 U.S.C. § 7907(a) and exceed the agency's authority granted by Congress. Agencies are not "free to ignore plain limitations on [their] authority." *Peters v. Hobby*, 349 U.S. 331, 345 (1955). The acts of a federal agent are invalid if they exceed the scope of the agent's authority, even if "the agent himself may have been unaware of the limitations upon his authority." *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947). "When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted." *Stark v. Wickard*, 321 U.S. 288, 309 (1944).

You asked, in your letter, for a constitutional analysis of the ESEA's mandates and full funding requirements. At the outset, there is simply "no place in our constitutional system for the exercise of arbitrary power, and, if [a federal agent] has exceeded the authority conferred upon [the agent] by law, then there is power in the courts to restore the status of the parties aggrieved by such unwarranted action." *Garfield v. United States*, 211 U.S. 249, 262 (1908). "The power of an administrative officer or board to administer a federal statute … is not the power to make law—for no such power can be delegated by Congress—but the power … to

[7] The Commentary in a recent *Education Week* analyzed the debate surrounding the direct and indirect costs of implementing the ESEA. Its conclusion: the ESEA only can be construed as "fully funded" under a series of highly artificial and politically unrealistic assumptions. *Education Week*, April 21, 2004, at 48.

carry into effect the will of Congress as expressed by the statute." *Manhattan General Equipment Co. v. Commissioner of Internal Revenue*, 297 U.S. 129, 134 (1936), *reh'g denied*, 297 U.S. 728 (1936).

If a federal agency is requiring Wisconsin or its subdivisions to expend their own resources to comply with the ESEA, that would implicate numerous constitutional questions. Congress, in enacting the ESEA, was essentially making a contractual offer, pursuant to its Spending Clause power (U.S. Const., art. I, § 8, cl. 1), to States and their subdivisions. *E.g., Gebser v. Lago Vista Independent School District,* 524 U.S. 274, 286 (1998) (when Congress enacts a law that imposes conditions on federal fund recipients, and a recipient accepts funds on that basis, that "amounts essentially to a contract between the Government and the recipient of funds"). *Gebser*, addressing when a recipient—which was not, like States, entitled to sovereign immunity—could be subjected to court claims for alleged noncompliance with conditions set forth in the federal statute, held that such claims are "examine[d] closely" by courts to assure that the recipient had "notice" of the condition and its consequences. 524 U.S. at 286-87. Particularly when Congress offers federal funds to States in exchange for certain conditions, those conditions must be expressed so authoritatively and unambiguously, through statutory language, that States "exercise their choice knowingly, cognizant of the consequences of their participation." *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981); *see Will v. Michigan Dept. of State Police,* 491 U.S. 58, 65 (1989) ("Congress should make its intention 'clear and manifest' … if it intends to impose a condition on the grant of federal moneys" to States); *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) ("if Congress desires to condition the States' receipt of federal funds, it must do so unambiguously").

The language in 20 U.S.C. § 7907(a) certainly did not expressly and unambiguously notify the States and their subdivisions that they would have to expend any of their own financial resources to perform activities contemplated under the ESEA. To the contrary, the plain meaning of 20 U.S.C. § 7907(a) conveys precisely the opposite message. When Congress, using its Spending Clause authority, clearly requires federal fund recipients, as a condition of receipt, to also expend their own resources to perform activities called for by the relevant statute, then the recipient, in accepting the funds, has to have notice of that requirement. *E.g., Irving Independent School Dist. v. Tatro*, 468 U.S. 883, 892-94 (1984); *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66, 68 (1999). Courts will "assume that Congress will not implicitly attempt to impose massive financial obligations on the States." *Pennhurst,* 451 U.S. at 16-17.

To the extent that congressional intrusions into the field of education are not authorized by its Spending Clause powers, those intrusions also collide with other constitutional constraints. For example, Congress' Commerce Clause "authority, though broad, does not include the authority to regulate each and every aspect of local schools." *United States v. Lopez*, 514 U.S. 549, 566 (1995). As one commentator noted, *Lopez* confirmed that "a federal statute may be

invalidated because it is beyond the scope of authority granted to Congress under the Commerce Clause, even if it is not unlawful as an unfunded federal mandate." Robert W. Adler, *Unfunded Mandates and Fiscal Federalism: A Critique*, 50 Vand. L. Rev. 1137, 1202 n.301 (1997). As you note in your letter, education is primarily the responsibility of the States. *E.g., San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 49 (1973); *Epperson v. State of Ark.*, 393 U.S. 97, 104 (1968). The non-fiscal issues, therefore, also are of constitutional concern.

Many educators fear that the ESEA testing mandates may force states to alter radically their educational curriculum and programs to focus almost exclusively on improving test scores of underperforming students. Wisconsin has long prided itself on its high rank in ACT scores and other measures of educational excellence. Requiring such significant changes in a state's educational system and "values" also may be beyond Congress's legislative powers, regardless of whether adequate funds are provided, or even whether such changes, in the federal government's view, are desirable.

Potential Wisconsin Involvement

Beyond whether the concerns you raised are legally sound, and the analysis above indicates that they are, you also asked how Wisconsin should consider becoming involved, if at all, in litigation regarding the ESEA. First, it is important to clarify that Tenth Amendment arguments would likely be premature, regardless of how, if at all, Wisconsin might become involved in litigation.[8] To the extent that a federal agency, such as the Department of Education, may actually sanction a State or subdivision for refusing to pay itself for activities not financed by federal funds under the ESEA, that could raise serious Tenth Amendment concerns. *E.g., West Virginia v. U.S. Dept. of Health and Human Services*, 289 F.3d 281, 292-94 (4th Cir. 2002). Anticipating that sanctions might be imposed, however, is generally too speculative to meet the "coercion" test that is applicable in Tenth Amendment settings. *Id.*

Any litigation likely would center on the factors noted earlier in this letter, namely the express language, and plain meaning, of 20 U.S.C. § 7907(a) and the lack of authority for any federal agent to require Wisconsin or its subdivisions to engage in any activities under the ESEA not fully funded by federal dollars. The most likely setting would be a declaratory judgment action filed in federal court seeking a declaration about the meaning and effect of 20 U.S.C. § 7907(a). It can be anticipated that any such legal challenge would be confronted with a series of arguments by the U.S. Department of Education represented by the U.S. Department of Justice—for example, that the controversy is not yet "ripe" and that, regardless, all administrative avenues should be exhausted before any court proceedings may be commenced.

[8] The Tenth Amendment to the United States Constitution provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The viability of any such "ripeness" arguments would depend heavily on what is actually occurring in Wisconsin. As noted earlier, DPI and Wisconsin school districts are in far better positions than I, at least initially, to marshal the evidence that would overcome "ripeness" arguments. Essentially, federal courts are restricted from addressing hypothetical disputes that may never come to fruition. *E.g., Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967). If the educational experts at DPI and elsewhere develop evidence that genuine and current harms are being inflicted through Department of Education requirements unauthorized by 20 U.S.C. § 7907(a), then it is likely that the court would, after balancing "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration," determine that the claims are ripe. Although a court could wait for specific sanctions against a specific school, the delay would cause only additional harm to our students. The need by school districts to prepare budgets and curriculum, it seems to me, may well be sufficient to determine that the claims are ripe.

Exhaustion of administrative avenues likely would present a separate hurdle, and one that could prove challenging. Nonetheless, the language and meaning of 20 U.S.C. § 7907(a) are so clear that—assuming DPI and others can marshal the needed evidence—a federal court might recognize that it should not await administrative reviews of individual appeals within a Department of Education process. Courts may resolve challenges to an agency's authority in situations in which the agency's assertion of jurisdiction "would violate a clear right of a petitioner by disregarding a specific and unambiguous statutory, regulatory or constitutional directive." *Hunt v. Commodity Futures Trading Comm'n*, 591 F.2d 1234, 1236 (7th Cir. 1979), *citing Leedom v. Kyne*, 358 U.S. 184 (1958).

Counter-arguments regarding "ripeness" or exhaustion, as well as other challenges the Department of Education and its officials might assert, would be more comprehensive than the abbreviated comments above. Litigation is always uncertain. I do not, however, presently perceive insurmountable hurdles to a court reaching the merits of an action seeking a declaration about the meaning, and effect, of 20 U.S.C. § 7907(a). The importance of the issue, and of public education, warrant a concerted effort to resolve these questions before harm occurs.

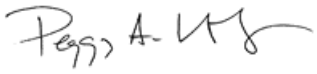
State law gives the Attorney General and Department of Justice broad discretion and significant authority to represent the people of Wisconsin. We generally are not, however, parties or litigants. The legal doctrine of standing requires that any litigation over the ESEA be brought or joined by a party with a real and direct interest in the controversy—a school district or state agency, for example.

The effect of the ESEA and the educational and fiscal obligations it imposes on Wisconsin and its schools should not be underestimated. Each school district, individually, will have to determine the financial impact of the ESEA and whether complying with the ESEA requires it to expend monies not provided under the law. The largest impact is likely to fall on

the shoulders of Wisconsin's largest and smallest school districts, or those most affected by the state's revenue controls. Accordingly, I am sending a copy of this letter to the Governor, the Secretary of the Department of Administration, the State Superintendent of Public Instruction, the Wisconsin Association of School Boards for their information and any appropriate action.

Please let me know if you have any questions

Very truly yours,



Peggy A. Lautenschlager
Attorney General

PAL:hah

cc: Governor James Doyle
Superintendent of Public Instruction Elizabeth Burmaster
Wisconsin Association of School Boards